

SHD Paraphrased Regulations - Medi-Cal

490 Real Property

490-1

Real property means land and improvements which generally includes any immovable property attached to the land and any oil, mineral, timber, or other rights related to the land. (§50074)

490-2

The CDHS shall, in general, record a lien against the ownership interest in the principal residence of an institutionalized beneficiary. Any recorded lien for an amount equal to the cost of medical care provided may be foreclosed only after:

- (1) The beneficiary sells the property; or
- (2) The beneficiary dies and there is no surviving spouse or the beneficiary has no surviving child who is under the age of 21 or who is blind or disabled.

Any such lien shall dissolve when the beneficiary is discharged from long term care and returns to the principal residence to live.

(§50428)

490-3

Conversion of property from one form to another in itself has no effect on eligibility but property obtained through a conversion may have an effect on eligibility and therefore shall be evaluated to determine its effect. (§50407)

491-1

If a person or family meets the property limit at any time during the month, property eligibility exists. (§50420(c))

491-2

The property limit for one person is \$2,000. The MFBU shall be ineligible if this limit is not met sometime during the month. (§50420)

If a person or family meets the property limit at any time during the month, property eligibility exists. (§50420(c))

491-3

The property limit for ___ person(s) in ___ is ___. The MFBU shall be ineligible if this limit is not met sometime during the month. (§50420)

491-5

Once a state has chosen to participate in the MN program, it must use a single resource standard that meets the requirements of 42 Code of Federal Regulations (CFR) §435.840(a).

In states which do not use more restrictive criteria than SSI for aged, blind, or disabled individuals, the resource standard must be established at an amount that is no lower than the lowest resource standard used under the cash assistance programs that relate to the state's covered MN eligibility group or groups. (42 CFR §435.840(b))

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491-6

Effective February 1, 1998, certain individuals who would otherwise have had excess property for the entire month, including the application month (but not the three retroactive months prior to application), may receive Medi-Cal benefits when:

1. They are otherwise eligible for Medi-Cal benefits.
2. They spend down retroactively on qualified medical expenses in a later month within three years from the notice denying Medi-Cal benefits based on excess resources, and reduce property holdings to allowable limits.
3. Verification of payment is provided to the county.

"Qualified medical expenses" are bills incurred in any month by the individual or individual's spouse, any member of the individual's MFBU, or the individual's children who are not in that person's MFBU but who are living with the individual; and the bills are unpaid in the same month where there is also otherwise excess property for the entire month.

(All-County Welfare Directors Letter (ACWDL) No. 97-41, October 24, 1997, implementing the settlement in *Principe v. Belshé*)

491-6A

An example of the application of the *Principe v. Belshé* court case is set forth below.

A hospitalized single person applies for Medi-Cal late in July 1998. The person owns excess property, e.g., a \$5,000 bank account. The person is not unconscious, comatose, or incompetent at any time during the month, but simply is unable to spend down to \$2,000, the property limit for one person.

In November, the person spends \$4,000 on medical expenses which were incurred in July. There is \$3,000 in otherwise excess property, and no excess property as of November. If other eligibility requirements are met, the person is retroactively eligible for Medi-Cal benefits for July through October 1998, and currently eligible in November. (The person cannot establish eligibility prior to the application month.)

Of the \$4,000 the person paid towards medical expenses to establish eligibility, \$1,000 may be reimbursed. (\$5,000 property, - \$3,000 to meet property limit; \$4,000 - the \$3,000 *Principe* exemption = \$1,000)

(All-County Welfare Directors Letter No. 97-41, October 24, 1997)

491-7

The SSI/SSP program rules and methodology are used in several Medi-Cal programs such as Pickle, Qualified Medi-Cal Beneficiaries (QMB) determinations, the Tuberculosis Program, and the 250% program for the Working Disabled. (All-County Welfare Directors Letter No. 99-67, December 3, 1999)

In the SSI program, there are two resource limits: \$2000 for an individual, and \$3000 for an individual and spouse. (20 Code of Federal Regulations (CFR) §416.1205(c))

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492-1

The separate property and share of community property of any person included in the MFBU shall be considered in determining Medi-Cal eligibility. A spouse's share of community property is always one-half of the current total community property. (§50403)

492-2

On August 25, 1985, the California Department of Health Services first required county eligibility staff to inform applicants and beneficiaries that they may establish eligibility for any month by bringing their property reserve within the property limit by the last day of that month through any means other than transfer without adequate consideration. The provisions regarding the conversion or discharge of excess resources and the property limit for the appropriate budget unit should be explained as soon as the eligibility worker has knowledge that the applicant may own nonexempt property in excess of the property limit. The explanation should occur in all instances, even if the eligibility worker believes that bringing the property reserve within the limit cannot be accomplished by the end of the month. (All-County Welfare Directors Letter (ACWDL), No. 85-58)

These instructions were revised in 1990. The written application must contain the property resources spenddown information. The EW shall give oral instructions at the time of the face-to-face interview. (ACWDL No. 90-91)

As of 1991, this explanation had to be contained on the "MC 007" and this document shall be provided when an applicant submits either a CA 1/SAWS 1 or a MC 176 PA - A. At the time of the screening, application, or restoration, the county shall inform all applicants of the appropriate property limits, and how property is exempted, counted, and valued; review the MC 007 with all applicants; inform all applicants of their right to reduce nonexempt excess property within the month of application; and provide options as to how excess property may be reduced and how adequate consideration may be obtained to establish eligibility in the month. (ACWDL No. 91-78)

Effective February 1, 1998, counties were required to destroy all old MC 007s, and to issue new MC 007s. The forms will contain a note about the property disregard program, the property limits and a list of the most common property exemptions, including information on the *Principe v. Belshé* provisions. (ACWDL No. 98-07, February 1, 1998)

On March 14, 2000, counties were reminded that they must provide the MC 007 to "all Medi-Cal applicants whenever a Medi-Cal application is submitted or information is requested about Medi-Cal. It must be reviewed with the individual during the face-to-face interview or at screening/assessment." (ACWDL No. 00-11, March 14, 2000)

492-2A

As of February 1, 1998, counties must inform applicants during the face-to-face (and/or at screening, if the county has that process) of the *Principe v. Belshé* provisions for establishing property eligibility for a month (beginning with the month of application) whether or not there appears to be excess property. The county worker shall provide the individual with the appropriate property limit, and paraphrase or give the following information:

"If you have property which exceeds the property limit for an entire month for which

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Medi-Cal is requested, you may still be able to receive Medi-Cal benefits for that month or months if you are otherwise eligible and you reduce your excess property by paying qualified medical expenses. Qualified medical expenses are bills that are incurred in any month by you, your spouse or any member of your Medi-Cal Family budget Unit (MFBU), or your children who are living with you but who are not members of your MFBU. These are bills which were unpaid in the same month where there was also excess property for the entire month beginning with the month of application. You may not establish eligibility for Medi-Cal in this way for any of the three months immediately preceding the month of application."

(All-County Welfare Directors Letter No. 97-41, October 24, 1997)

492-2B

Counties must provide a form (currently DHS 7077, 12/99) containing specific language, in 10-point type, to all long-term care (LTC) applicants, their spouses and/or agents/authorized representatives. This form must be provided and reviewed during an assessment or the face-to-face interview. The form must be signed by, and a copy must be provided to the applicant and his or her spouse, legal representative, or agent, if any, and a copy retained in the case record.

If the applicant is not competent, the form must be reviewed with, signed by, and provided to the competent spouse, if any, attorney and/or agent. If the legal representative or agent is a public guardian or conservator and that person is not attending a face-to-face interview, then the form must be mailed to the guardian or conservator for their signature. The county must request that a signed copy be returned to the county for retention in the case record.

In reviewing the form with the individual(s) counties are requested to underscore that there is NO PERIOD OF INELIGIBILITY FOR NURSING FACILITY LEVEL OF CARE FOR TRANSFERS OF EXEMPT PROPERTY, INCLUDING THE PRINCIPAL RESIDENCE, AS LONG AS THE PROPERTY WAS EXEMPT AT THE TIME OF THE TRANSFER. IF AN APPLICATION WAS NOT FILED BY THE TIME OF THE TRANSFER, THEN THE COUNTY MUST DETERMINE IF THE PROPERTY, INCLUDING THE PRINCIPAL RESIDENCE, WOULD HAVE BEEN CONSIDERED EXEMPT AT THE TIME OF THE TRANSFER AS IF AN APPLICATION HAD BEEN SUBMITTED FOR THE MONTH OF THE TRANSFER.

Since exempt property, nonexempt property included in the Community Spouse Resource Allowance and nonexempt property under the property limit can all be retained without affecting Medi-Cal eligibility, it is only when excess property is transferred that Medi-Cal eligibility is affected. Before a period of ineligibility for nursing facility level of care may occur, the county must make a determination that the nonexempt property transferred would have been considered excess nonexempt property at the time of the transfer. If no application was filed by the time of the transfer, then the county must determine whether the nonexempt property transferred would have been considered excess nonexempt property as if an application had been submitted for the month of the transfer.

(All-County Welfare Directors Letter No. 00-11, March 14, 2000, implementing W&IC §§14006.3 and .4)

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492-2C

Effective January 1, 2003, counties shall provide a notice to all non-institutionalized aged, blind and disabled Medi-Cal only applicants at the time of application. This notice is to be given to the applicant, or to his/her spouse, legal representative or agent. The notice shall state that an individual can transfer her/his home ownership for less than fair market value, and the transfer shall not affect Medi-Cal eligibility.

The county must retain the original copy of the form (whether signed or not) in the case file, and give a copy to the applicant or the representative.

(All-county Welfare Directors Letter No. 02-60, December 23, 2002; W&IC §14006.7)

492-3

Other real property, as specified in §50427(b), shall be utilized in order to be exempt unless the net market value of the property, when added to the net market value of other nonexempt property, is within allowable property limits.

The property is utilized when:

- (1) The beneficiary is receiving net yearly income from the property of at least six percent of the net market value of the property; or
- (2) The property has been sold or the sale is in escrow and there is a bona fide attempt to close the sale.

The applicant or beneficiary shall be allowed six months to meet utilization requirements. The utilization period may be extended for a maximum of one year if good cause is established. The utilization period shall also be extended as long as the property is listed for sale if the county determines that utilization requirements can only be met by sale of the property and the applicant or recipient provides sufficient and regular documentation to the county that all reasonable efforts are being made to sell the property at its market value.

(§50416)

492-3A

Although §50416 has not been formally amended as of October 1, 2002, the following modifications to that section have been in effect since May 1, 1990 based on CDHS interpretation of federal law.

First, §50416 applies only to nonbusiness real property.

Second, if the county department determines that utilization requirements can only be met by sale of the property, the utilization period shall be extended for as long as the property is listed for sale and meets the requirements to be considered otherwise unavailable in accordance with proposed §50402 (as set forth in All-County Welfare Directors Letter (ACWDL) No. 90-01, January 5, 1990). (ACWDL No. 91-28, March 22, 1991)

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492-5

Prior to May 5, 1994, state regulations provided that:

- (a) Real or personal property held in trust for the applicant or beneficiary shall be exempt if the applicant or beneficiary cannot obtain access to the principal of the trust.
- (b) To determine whether the trust is available, the applicant or beneficiary shall take whichever of the following actions is appropriate within 30 days of being advised by the county department of the responsibility to do so.
 - (1) Request the trustee to release the funds.
 - (2) Request that the trustee petition the court for the release of the funds.
 - (3) Petition the court directly if the trustee refuses to take the action specified in §(1) or (2).
- (c) The trust shall be exempt pending completion of the action specified in (b).
- (d) The trust shall be included in the property reserve, or considered as other real property, under either of the following conditions:
 - (1) The applicant or beneficiary refuses to initiate the action specified in (b).
 - (2) The court determines that the trust is available to the applicant or beneficiary.
- (e) These provisions do not apply if the applicant or beneficiary is the income beneficiary only and has no ownership interest in the corpus of the trust.

(§50489, repealed effective May 4, 1994)

492-5A

A Medicaid Qualifying Trust (MQT) or Similar Legal Device (SLD) is an instrument established prior to August 11, 1993 which: (1) is established, other than by will, by an individual, or the individual's spouse, guardian, conservator or legal representative who is operating on the person's behalf; (2) provides that the individual may receive all or a part of the payment from the trust, either directly or to another person or entity on behalf of the individual; (3) gives the trustee any discretion in distributing funds to the individual or another person on behalf of the individual.

Property in an MQT or SLD is generally considered available if the instrument is revocable. If the MQT or SLD is irrevocable, (1) any amount distributed to, or on behalf of, the individual from principal is available property; (2) any amount distributed to, or on behalf of, the individual from income is income; and (3) the maximum amount the trustee could legally distribute under the terms of the instrument, even if not distributed, is available property.

(All-County Welfare Director's Letter No. 93-07, February 10, 1993, proposing

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amendment to §50489; and relying on 42 United States Code, §§1396a(k), 1396(r)(2)(A), and 1396(c), and Welfare and Institutions Code §§14005.7, 14006(c) and 14015; §50489)

492-5B

Section 50489 (pertaining to Medicaid Qualifying Trusts (MQTs) and Similar Legal Devices (SLDs) had not been amended from May 6, 1994 through January 27, 1998, but 42 United States Code (USC) §1396p(d) was amended effective August 11, 1993 and provided for a different treatment of MQTs and SLDs than had previously existed. The CDHS issued instructions to the counties as to the treatment of trusts established on or after August 11, 1993 which are contained in All-County Welfare Directors Letter (ACWDL) No. 94-01, January 5, 1994.

The following summarizes the provisions of 42 USC 1396p(d) and is generally reflective of the CDHS position as contained in ACWDL 94-01 and of §50489.5, effective January 28, 1998.

Trusts affected by this section are those established on or after August 11, 1993. The assets in the trust must include at least some assets of the individual as part of the trust corpus. The trust must not have been established by will. It must have been established by the individual or his/her spouse; or a person, including a court or administrative body with legal authority to act in place or on behalf of the individual or his/her spouse; or which person is acting at the direction or upon the request of the individual or the individual's spouse. (Subsection (2)(A))

When the corpus consists of assets of other persons, those assets shall not be governed by these provisions. (Subsection (2)(B))

In the case of a revocable trust, the corpus is considered an available resource. Payments from the trust to or for the benefit of the individual are income. Any other payments are considered transfers of assets and treated in accord with 42 USC §1396p(c). (Subsection (3)(A))

In the case of irrevocable trusts in which payment from the trust could be made to or for the benefit of the individual, then the entire amount the trustee could legally distribute is available property. Distributions from income to or on behalf of the individual are income; distributions of property are property. (Subsection (3)(B)(i))

Any portion of the irrevocable trust from which no income nor property payments could be made is treated as a transfer under 42 USC §1396p(c). (Subsection (3)(B)(ii))

The following trusts are not governed by the above.

1. A trust containing the assets of an individual under age 65 who is "disabled" (under Title II or XVI) and which is established for the individual's benefit by a parent, grandparent, or legal guardian of the individual, or by a court: IF the State will receive all amounts remaining in the trust upon the individual's death, up to an amount equal to the State's payment for medical assistance on behalf of the individual. (Subsection (4)(A))

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2. A trust containing the assets of a "disabled" (under Title II or XVI) individual; established by the individual's parent, grandparent, legal guardian, or by a court; managed by a nonprofit association which pools the accounts for investment and management purposes but maintains separate accounts for each beneficiary: IF the State will receive all amounts remaining in the trust upon the individual's death, up to an amount equal to the State's payment for medical assistance on behalf of the individual. (Subsection (4)(C))

The CDHS issued new trust regulations effective January 28, 1998. (§50489)

492-6

Real property not exempt as a principal residence, including deeds of trust, is exempt if its net market value is less than \$6,000 and the owner meets applicable utilization requirements. (§50427)

492-7

State regulations provide that property which is not available shall not be considered in determining eligibility. (§50402)

Although §50402 has not been formally amended as of December 1, 2002, the following rules have been in effect since January 1, 1990 based on federal law.

Property which the applicant or beneficiary has the legal right, power, and authority to liquidate is considered available and is used in determining eligibility.

If there is excess property and the applicant or beneficiary establishes a good-faith intent and makes a bona fide effort to liquidate the property or otherwise fulfill the requirements of this proposed section, the property shall be considered unavailable beginning the first day of that month. The property shall remain unavailable until after consideration for the property is received, or until the applicant or beneficiary discontinues his/her good faith intent or bona fide efforts to liquidate the property. This availability principle applies to other real property regardless of value.

A bona fide effort to sell includes listing the property for sale with a licensed real estate broker for its fair market value, advertising the property for sale in a local newspaper, accepting bona fide offers within two-thirds of the fair market value, and supplying copies of all offers.

(All-County Welfare Directors Letter No. 90-01, January 5, 1990, proposing modification of §50402)

493-1

The owner of property for Medi-Cal purposes shall be the person who holds legal title to the property unless otherwise specified in the regulations. Ownership of the property may be vested in one individual or shared with other individuals. (§50404)

493-1A

It is the position of CDHS that if evidence clearly establishes that property held in the individual's name, in whole or as a joint owner, does not belong to the individual, then the property shall not be considered available to the individual.

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Such evidence may include withdrawals and deposits made by someone other than the individual; a postmarked envelope with a letter discussing the property and providing instructions as to its use; or copies of the other person's pay stubs with corresponding dates and deposits into the individual's account.

Statements or affidavits alone are insufficient to establish unavailability.

If the property is personal property, the individual must make a good-faith intent and bona fide effort to remove his/her name from the property, or restrict his/her access to the property.

(All-County Welfare Directors Letter No. 90-01, January 5, 1990; Draft Regulation §50402(f))

493-2

State law provides that the resources of a married individual who resides in skilled nursing care shall be limited to all of his or her nonexempt separate property and one-half of his or her nonexempt community property at the time when he or she entered a skilled nursing facility. (Welfare and Institutions Code (W&IC) §14006.2(c))

493-3

The owner of property for Medi-Cal purposes shall be the person who holds legal title to the property unless otherwise specified in the regulations. Ownership of the property may be vested in one individual or shared with other individuals. (§50404)

494-1

The net market value of property is the owner's equity in the property and it is determined by subtracting the encumbrances of record from the market value. (§50415)

494-2

A life estate interest in real or personal property shall be considered real or personal property, respectively. The value of the life estate shall be the entire market value of the property if the applicant or beneficiary was the owner of the property prior to selling the property, and retains a revocable life estate in the property. In all other instances, the value is determined in accordance with the California State Gift Inheritance Tax Formula, or at the applicant's or beneficiary's option, a lesser value as determined by a qualified appraiser (as described in §50441(c)). (§50442)

494-3

The market value of real property shall be either:

- (1) The assessed value determined under the most recent property tax assessment, if the property is located in California.
- (2) The value established by applying the assessment method used in the area where the property is located, if the property is located outside of California.

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- (3) The value established as the result of an appraisal by a qualified real estate appraiser, if the appraisal is obtained by the applicant or beneficiary and provided to the county department.

(§50412)

495-2

There is an exclusion of business property from property consideration in certain circumstances. Equipment, inventory, licenses and materials shall be considered necessary for self-support if the business is realizing a reasonable rate of return. Motor vehicles shall be considered equipment only if used for employment. Cash on hand and money in checking accounts necessary for the functioning of the business shall be exempt up to a maximum of three times the average monthly cash expenditures of the business. (§50485)

Although §50485 has not been formally amended as of December 1, 2002, the following rules have been in existence since May 1, 1990 based on federal law. First, it is no longer necessary to realize a reasonable rate of return in order to exempt the equipment, inventory, licenses and materials. Second, cash on hand and money in checking accounts necessary for the functioning of the business are totally exempt. Third, real property used in whole or in part as a business or means of self-support is exempt. (All-County Welfare Directors Letter No. 91-28, March 22, 1991)

495-2A

The CDHS exempts equipment, inventory, licenses, materials, and real estate which are in current use and are necessary for employment, for self-support or for an approved plan of rehabilitation or self-care necessary for employment. (All-County Welfare Directors Letter (ACWDL) No. 91-28, March 22, 1991, proposing to amend §50485)

The CDHS clarified ACWDL 91-28 as follows:

1. Property used simply for investment purposes, rather than for self-employment is not exempt. This includes a former home which is now rented. (Such former home may be exempt as a principal residence if it meets the requirements of §50485(c))
2. As long as individuals have an approved plan for achieving self-support, from the county, the Department of Rehabilitation, or the SSI program, property included in that plan, even if not currently in use, may be exempted. (ACWDL No. 95-22, April 3, 1995)

495-3

Property which the applicant or beneficiary uses or formerly used as a home shall be exempt under the following situations:

- (1) The applicant or beneficiary lives on the property.

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- (2) The family of the applicant or beneficiary lives on the property and is in an MFBU with the applicant or beneficiary, or the family's income is used in determining the applicant's or beneficiary's eligibility.
- (3) The applicant or beneficiary is absent from the property for any reason, including admittance to long term care, and declares in writing that he/she intends to return to the property to live.
- (4) The applicant or beneficiary is absent from the property and has a spouse, child under age 21 or a dependent relative who lives on the property. A disabled child aged 21 or older is considered a dependent relative for purposes of this regulation.
- (5) A sibling or child aged 21 or over of the applicant or beneficiary has continuously resided on the property for at least one year immediately prior to the date the applicant or beneficiary entered a long term care facility.
- (6) The property cannot be sold because there are legal obstacles preventing the sale and the applicant or beneficiary or person acting on his/her behalf provides evidence of attempts to overcome such obstacles.
- (7) The applicant or beneficiary no longer lives on the property, does not intend to return to the property, the property is not otherwise exempt and the property cannot be readily converted to cash but a bona fide effort is being made to sell the property.

(§50425(c))

495-3A

When the Medi-Cal applicant or beneficiary formerly used a home as his/her principal residence, and the individual's subjective intent is to return to the home, that home is an exempt resource. It is irrelevant whether there is objective evidence which indicates that the individual will not return to the home. (All-County Welfare Directors Letter No. 95-48, August 24, 1995, interpreting §50425(c))

495-3B

The CDHS has defined a "home" as real or personal property, fixed or mobile, located on land or water, in which a person or family lives. (§50044)

495-4

State law provides that the value of property holdings shall be determined as of the date of application and if the person is found eligible, this determination shall establish the amount of such holdings to be considered during the succeeding 12 months. A new determination shall be made on the first anniversary date of the application, or such alternate date as may be established following the acquisition of additional holdings, as provided in Subsection (i). (Welfare and Institutions Code (W&IC) §14006(h))

If any person shall acquire additional holdings by gift, inheritance, or other manner (other than from his or her own earnings), that person shall immediately report such

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acquisition, and the anniversary date shall become the date of such acquisition. (W&IC §14006(i))

496-1

Sections 50408 and 50409 discuss transfers of property which result in ineligibility to Medi-Cal. There is a presumption that property transferred by the applicant or beneficiary more than two years preceding the date of initial application was not transferred to establish eligibility or to reduce the share of cost. Such property shall not be considered in determining eligibility, unless there is evidence which disproves the presumption.

As of January 1, 1990, there was neither state nor federal authority to impose a disqualification period for the transfer of assets, except in certain cases involving institutionalized individuals, who, or whose spouse at any time during or after the 30-month period immediately before the date the individual became an institutionalized individual, disposed of resources for less than fair market value. See 42 United States Code §1396p(c) and Welfare and Institutions Code §14002 and 14006. However, as of October 1, 2002, the regulations cited above had not been amended nor repealed.

Although CDHS has not formally amended the regulations, it is the departmental policy, based on federal law, not to apply the regulations to transfers of property unless the transfer occurred before January 1, 1990, and was made by an institutionalized individual or by a person who was a beneficiary prior to January 1, 1990. (All-County Welfare Directors Letter No. 90-01, January 5, 1990)

496-1A

The CDHS has established the following policy for transfers of nonexempt property which occurred on or after January 1, 1990.

An institutionalized individual who transfers nonexempt property at any time, including within 30 months immediately preceding the date of application for Medi-Cal, shall be presumed to have transferred that property in order to establish eligibility or reduce the share of cost (SOC).

Unless that presumption is rebutted, there shall be a period (not to exceed 30 months) in which the person is ineligible for nursing facility services or their equivalent. (All-County Welfare Directors Letter No. 90-01, January 5, 1990, proposing §§50408.5 and 50411.3; 42 United States Code §§1396p and 1396r-5)

496-2

Section 50408(a)(1) provides that exempt property which is transferred shall not result in ineligibility. Subsection (a)(2) provides that ineligibility will not result when the property transferred, if included in the property reserve, would not result in ineligibility.

As of January 1, 1990, there was neither state nor federal authority to impose a disqualification period for the transfer of assets, except in certain cases involving institutionalized individuals, who, or whose spouse at any time during or after the 30-month period immediately before the date the individual became an institutionalized individual, disposed of resources for less than fair market value. See 42 United States Code §1396p(c) and Welfare and Institutions Code §14002 and 14006. However, as of

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October 1, 2002, the regulations cited above had not been amended nor repealed.

Although CDHS has not formally amended the regulations, it is the departmental policy, based on federal law, not to apply the regulations to transfers of property unless the transfer occurred before January 1, 1990, and was made by an institutionalized individual or by a person who was a beneficiary prior to January 1, 1990. (All-County Welfare Directors Letter No. 90-01, January 5, 1990)

496-2A

The CDHS has established the following policy for transfers of property made on or after January 1, 1990 by institutionalized individuals.

Any such transfer shall not result in any period of ineligibility in the following situations.

1. The property was previously exempt as the principal residence under §§50425(c)(1-7) and title was transferred: To the spouse or community spouse; to a son or daughter under 21; to a son or daughter who is blind or disabled under §50167(a)(1); to a sibling with an equity interest in the property and who resided in the property at least one year before the date the transferor was institutionalized; or to a son or daughter who resided in the property at least two years before the transferor was institutionalized, and who provided care to the transferor which enabled that person to reside at home rather than in a medical or nursing facility.
2. The property was exempt under §50418.
3. The nonexempt property was transferred to, or for the sole benefit of, the community spouse; to a son or daughter who is blind or disabled under §50167(a)(1); to, or for the sole benefit of, the person's spouse prior to institutionalization, as long as the spouse did not transfer the property for less than fair market value.
4. The nonexempt property was, or was intended to be, transferred at fair market value or for other equally valuable consideration.
5. The resources were transferred exclusively for a purpose other than to qualify for medical assistance.
6. The period of ineligibility would work an "undue hardship" on the transferor.

(All-County Welfare Directors Letter No. 90-01, January 5, 1990, proposing §§50411.5 and 50096.5; 42 United States Code §§1396a, 1396p, and 1396r-5)

496-3

Section 50408(a)(3) provides that a transfer of property shall not result in ineligibility for Medi-Cal if adequate consideration is received. Adequate consideration includes a transfer which was to satisfy a legal debt; a transfer which was to reimburse someone other than a responsible relative, as specified in §50351, for care or benefits provided on the basis of an agreement or understanding that reimbursement would be made; or a written interspousal agreement that transmutes a married couple's nonexempt

community property into equal shares of separate property. The applicant or beneficiary shall provide evidence that clearly establishes that the value of the care or benefits provided was reasonably equivalent to the value of the property transferred.

Section 50408(a)(6) provides that the transfer of property shall not result in ineligibility when the transfer was made without adequate consideration but the applicant or beneficiary provides convincing evidence, as specified in §50409(b), to overcome the presumption that the transfer was for the purpose of establishing eligibility or reducing the share of cost.

As of January 1, 1990, there was neither state nor federal authority to impose a disqualification period for the transfer of assets, except in certain cases involving institutionalized individuals, who, or whose spouse at any time during or after the 30-month period immediately before the date the individual became an institutionalized individual, disposed of resources for less than fair market value. See 42 United States Code §1396p(c) and Welfare and Institutions Code §§14002 and 14006. However, as of October 1, 2002, the regulations cited above had not been amended nor repealed.

Although CDHS has not formally amended the regulations, it is the departmental policy, based on federal law, not to apply the regulations to transfers of property unless the transfer occurred before January 1, 1990, and was made by an institutionalized individual or by a person who was a beneficiary prior to January 1, 1990. (All-County Welfare Directors Letter No. 90-01, January 5, 1990)

496-4

Section 50409(b) as modified by *Beltran v. Myers* provides that transfer of property without adequate consideration shall result in ineligibility for Medi-Cal if the transfer was made to establish eligibility or to reduce the share of cost. It shall be presumed that property transferred without adequate consideration was for the purpose of establishing eligibility or to reduce the share of cost. To overcome the presumption, the applicant or beneficiary shall present "convincing evidence" including subjective evidence that the transfer was for some other purpose.

As of January 1, 1990, there was neither state nor federal authority to impose a disqualification period for the transfer of assets, except in certain cases involving institutionalized individuals, who, or whose spouse at any time during or after the 30-month period immediately before the date the individual became an institutionalized individual, disposed of resources for less than fair market value. See 42 United States Code §1396p(c) and Welfare and Institutions Code §§14002 and 14006. However, as of October 1, 2002, the regulations cited above had not been amended nor repealed.

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496-5

Section 50411 discusses the period of ineligibility resulting from a transfer of property. This period shall be the time during which the net market value of the property at the

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time of the transfer, less consideration received, would have supported the applicant or beneficiary and the applicant's or beneficiary's family. The period of ineligibility is computed by determining the net value of the property transferred which was in excess of the property standard. This amount is then divided by the monthly maintenance need for the applicant or beneficiary and the applicant's or beneficiary's family. The period of ineligibility may be further reduced by deducting the actual cost of medical expenses, out-of-home care costs in excess of the maintenance need, and major home repairs necessary to put the home in a liveable condition. The period of ineligibility shall begin the first of the month following the date that the transfer which resulted in ineligibility occurred. The period of ineligibility shall end if the property involved is reconveyed or the applicant or beneficiary receives adequate consideration for the property.

As of January 1, 1990, there was no state nor federal authority to impose a disqualification period for the transfer of assets, except in certain cases involving institutionalized individuals, who, or whose spouse at any time during or after the 30-month period immediately before the date the individual became an institutionalized individual, disposed of resources for less than fair market value. See 42 United States Code §1396p(c) and Welfare and Institutions Code §§14002 and 14006. However, as of October 1, 2002, the regulations cited above had not been amended nor repealed.

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496-6

There are restricted benefits for individuals in long-term care facilities who transfer property for less than fair market value. If a disqualifying transfer occurs, all Medi-Cal services other than long-term care services will be covered. (All-County Welfare Directors Letter (ACWDL) No. 92-57, October 2, 1992)